The Duality of the Warren Report

INQUEST: THE WARREN COMMISSION AND THE ESTABLISHMENT OF TRUTH
By Edward Jay Epstein
Viking. 224 pp. $5.00.

Reviewed by
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THIS IS indeed a fascinating book. Edward Jay Epstein, its author, tells us he began it as a Master's thesis in government at Cornell University, with the "initial stimulus" coming from a problem posed by Professor Andrew Hacker: "How does a government organization function in an extraordinary situation in which there are no rules or precedents to guide it?"

But Epstein could not answer the question as stated. For the Warren Commission is not an ordinary "government organization" placed in an extraordinary situation; and the absence of rules and precedents to *guide* it was of minor importance, I would even say of no importance at all, compared to the presence of political preoccupations—or prejudices—to *dictate* each of its steps. Thus Epstein's case study, as he discovered himself while advancing in his research, turned out to apply to something completely different than the case he set out to study.

None of the failures of the Warren Commission, in fact, can be attributed to lack of rules or precedents. The Commission, for instance, could have avoided many of its "errors" by simply adopting the time-tested rule of cross-examination, "the greatest legal engine ever invented for the discovery of truth," as John Henry Wigmore already stated in 1905, adding that "there has probably never been a moment's doubt upon this point in the mind of a lawyer of experience." I do not doubt that Chief Justice Earl Warren is such a "lawyer of experience". But the main preoccupation of the Commission was with "national interest," not with truth, and the real problem Epstein wound up studying concerned the place of what he calls "political truth"—the French have had the unhappy occasion to contribute the expression *raison d'Etat*—in the activities of a government organization. This is precisely what makes *Inquest* so fascinating.

Since its "primary subject," in the words of the author, was "the Warren Commission, not the assassination itself," one of Epstein's main achievements, and one which confers a really exceptional interest to his book, has been his success in interviewing five of the seven members of the Commission (missing only Senator Richard B. Russell and Chief Justice Warren), General Counsel J. Lee Rankin, eight out of 14 assistant counsel, and the senior U.S. Air Force historian who had special responsibility for writing the Report.

All these "co-authors" of the Warren Report had remained in majestic—and contemptuous—silence, with the sole exception, as far as I know, of Congressman Gerold R. Ford. The Congressman apparently did not think it unethical to publish a $6.95 report of his own called *Portrait of the Assassin,* which advertised him as "A member of the Warren Commission" on the jacket. Now some of the others have not only talked to Epstein, but Assistant Counsel Wesley J. Liebeler even seems to have let him have a copy of a 26-page memorandum criticizing the *Report*'s chapter on "The Assassin." According to the book, Liebeler submitted this to the Commission on September 6, 1964.

I suppose there will be some denials and rectifications, though at the time of this writing, if "everyone's yelling 'mis-quote' " as *Newsweek* says, quoting one of the "staff alumni" described as "hopping mad," the protest is remarkably anonymous. Epstein, in any event, has gathered enough inside information on the working of the Commission to be able to trace the "Limits of the Investigation" as well as the "Limits of the Investigators." The results allow him to define the "Dominant Purpose" of the Warren Commission in the following terms:

"If the explicit purpose of the Commission was to ascertain and expose the facts, the implicit purpose was to protect the national interest by dispelling rumors. These two purposes were compatible so long as the damaging rumors were untrue. But what if a rumor damaging to the national interest proved to be true? The Commission's explicit purpose would dictate that the information be exposed regardless of the consequences, while the Commission's implicit purpose would dictate that the rumor be dispelled regardless of the fact that it was true."

Epstein's conclusion is that "in a conflict of this sort, one of the Commission's purposes would emerge as dominant." Is there anybody who has any doubts about which one?

What Epstein does not say is that this "dualism in purpose" applied to the assistant counsel individually as well as to the Commission as a whole. Thus, Wesley J. Liebeler's 26-page memorandum, which Epstein says was written after Liebeler read the galley proofs of Chapter IV of the *Report* ("The Assassin"), called attention to some of the obvious inconsistencies I listed in the articles I wrote for THE NEW LEADER (see NL, November 22 and December 20, 1965,

and January 3, 1966). According to Epstein, for instance, Liebeler was fully aware of the misleading character of the statement concerning the presence of the rifle in the Paine's garage "until the morning of the assassination." And, like most normal people, he found the *Report* concerning "Oswald's Rifle Capability" to be "contrary to the evidence." Epstein says Liebeler's memorandum ran into difficulties with Norman Redlich, who had just rewritten this chapter, but that "some changes were made." Perhaps it was worse before, but as far as I am concerned, I still see in the *Report* all the untrue and misleading assertions Liebeler is said to have denounced on September 6, 1964. So, what good did he and his memorandum do?

There is a frightening reply which Norman Redlich is quoted as having given Liebler concerning the rifle tests: "The Commission judged it is an easy shot, and *I* work for the Commission." Redlich, apparently, used a similar formula about Helen Markham, one of the Commission's most appalling star witnesses. When Liebeler, who had questioned her and caught her in full perjury, told Redlich that her testimony was "contradictory" and "worthless," Redlich is said to have responded: "The Commission wants to believe Mrs. Markham and that's all there is to it." Whether willingly or unwillingly, the fact is that Liebeler agreed, since Helen Markham appears in the Warren Report as a "reliable" witness.

I have nothing personal, of course, against Wesley J. Liebeler, whom I do not know, and whom I cite only because of the part he plays in Epstein's book. Epstein also mentions Joseph A. Ball, senior assistant counsel of the Commission, who, it seems, wrote a first draft of Chapter IV but was overruled by Redlich and Rankin. Ball, according to Epstein, rejected the testimony of Helen Markham as "utterly unreliable," and was also "extremely dubious" of the testimony of Howard Brennan, the super-star "eyewitness" who, the Commission wants us to believe, "identified" Lee Oswald as the man with the gun. In his interview with Epstein, Ball revealed that during a "reconstruction" of the assassination in Dallas on March 20, 1964, Brennan had "difficulty seeing a figure in the window," much less identifying someone from the sidewalk.

But it so happens that Joseph A. Ball, when one goes through the 26-volume set of the Hearings, appears as one of the Commission's worst interrogators—that is, one of those who seem to be trying hardest to keep the witnesses from saying anything that might lead away from the Commission's pre-established conclusions. And Liebeler is the Assistant Counsel who systematically ignored the obvious but unpleasant implications of the presence of a repair tag in the name of Oswald on the workbench of an Irving gunsmith (see NL, January 3, 1966). So Liebeler, too, must have said to himself: "*I* work for the Commission."

Indeed, Liebeler's reason for protesting against Redlich's text of Chapter IV was, according to the warning Epstein says figured in the memorandum, that such methods "could seriously affect the integrity and credibility of the entire report." There is therefore still no consideration of truth or justice; only of public relations.

Epstein leans backward to be fair not only to individuals but to the Commission generally. That is because in his preface he has, rather arbitrarily, divided most of the writing on the assassination "into two diametrically opposed categories: demonology and blind faith." Having rejected blind faith, he is obviously afraid to fall into demonology. But even if some of his conclusions are embarrassed and reticent, they are clear. For example, after telling the inside story on the *Report*'s crudely titled Chapter IV, "The Assassin," and after quoting Liebeler's and Ball's criticisms and Redlich's replies, Epstein offers the following concluding paragraph:

"Although Chapter IV is not a 'prosecutor's brief' in the sense that it presents only one side of the case, it certainly is not an impartial presentation of the facts. In the final analysis, Redlich did 'work for the Commission.' That he is a man of high personal integrity only adds to the poignancy of the situation. In his role as editor, he had to select evidence that supported the Commission's judgments. As contradictory evidence and inconsistent details therefore tended to be omitted, the selection process tended to make the Commission's judgments self-reinforcing."

This gloved approach disappears, however, when Epstein comes to deal with the four-volume FBI report of December 9, 1963, which became available to the public early this year at the National Archives in Washington, and a "Supplemental Report" dated January 13, 1964, excerpts of which he makes public for the first time. These reveal a flagrant contradiction between the Warren Commission and the FBI as to the results of the President's autopsy at the Bethesda, Maryland, Naval Hospital. In fact, they leave no substance whatsoever to the Commission's audacious speculation that Governor John Connally was hit by a bullet which had first pierced the President's throat. And that reopens, once more, the essential question of which bullets hit the President, and which rifle fired them. No less important, it reopens the whole moral issue surrounding the case, and Epstein perfectly exposes the dilemma:

"On one hand, if the FBI reports distorted such a basic fact of the assassination, doubt is cast on the accuracy of the FBI's *entire* investigation; indeed the Commission's in-

vestigation and conclusions were, in the final analysis, predicated on the accuracy of the FBI reports. The second horn of the dilemma is even more painful, for, if the FBI's statements on the autopsy are accurate, then the autopsy findings must have been changed after January 13. This would mean that the document in the Warren Report which purports to be the original autopsy report is not. This dilemma cannot be resolved in terms of what one considers to be 'inconceivable.' To some it would be 'inconceivable' that the FBI would make a repeated error of this magnitude and import in its final report to the President; to others it would be inconceivable that the Warren Commission would substantially alter the basic facts. The answer may, however, be found in the evidence surrounding the autopsy."

This evidence is examined by Epstein in a few pages of remarkably clear, sharp, indisputable reasoning. His conclusion is that "the FBI reports are not erroneous." And here the young man from Cornell University almost looses his academic calm.

"If the FBI reports are accurate, as all the evidence indicates they are, then a central aspect of the autopsy was changed more than two months after the autopsy examination, and the autopsy report published in the *Warren Report* is not the original one. If this is in fact the case, the significance of this alteration of facts goes far beyond merely indicating that it was not physically possible for a lone assassin to have accomplished the assassination. It indicates that the conclusions of the *Warren Report* must be viewed as expressions of political truth."

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Regrettably after thus deceptively contributing to the necessary task of replacing "political truth"—that is, a well-intentioned lie—with the real facts, Epstein nevertheless accepts without examination or question, the Commission's "political truth" about Oswald's guilt: While rejecting the Commission's affirmation about the lone assassin and showing convincingly that there *must* have been two assassins, he accepts very lightheartedly the assertion, as one of two if not alone, Lee Harvey Oswald shot at the President. And here we find no arguments, no proofs, no reasoning; only conclusions.

Joseph A. Ball has convinced Epstein that "the chain of evidence (against Oswald) was indeed compelling," and "although the possibility the Oswald was unwittingly involved (that is, 'framed') was apparently not explored, other circumstances—such as the shooting of police officer J. D. Tippit—severely diminished the credibility of this possibility." Later Epstein insists again: "Oswald's subsequent actions —leaving the scene,. shooting a policeman, and resisting arrest—certainly were not the actions of an innocent person."

That Oswald left the scene or punched policeman McDonald in the face at the Texas Theater proves absolutely nothing. As for the shooting of policeman Tippet, Epstein cannot ignore the fact that the Commission's case here rests squarely on the shoulders of Mrs. Helen Markham, about whom he has heard from both Liebeler and Ball. Since he has also read in the Liebeler memorandum how unconvincing some of the other charges against Oswald appear even to the eyes of Commission staff members, Epstein's unhesitating acceptance of the Commission's accusations. I hope this was not to make the rest of his book more palatable. Whatever the case, these few unsubstantiated pages damage the lasting importance of an otherwise brilliant and constructive achievement.

Intellectual Event

THE COMMENTARY READER
Edited by Norman Podhoretz
Atheneum 763 pp. $12.50.

Reviewed by
ROBERT LEKACHMAN

SINCE otherwise selection is impossible, anniversary collections of magazine articles inevitably represent a point of view. A terrifying quantity of material is published in two decades even by a monthly like *Commentary* or in one decade by the Anglo-American *Encounter*. When the assortment is derived from a half century of a weekly like the *New Republic* or the *New Statesman* the amount of prose to be discarded is stupendous. Indeed, it passes possibility that a single mortal man can really scan—I do not say read—a half century of old magazines.

What principles have animated Norman Podhoretz, since 1960 editor of *Commentary*, in the making of the series of choices which comprise this sumptuous reader? One can start by discarding an almost useless guide to the specialized mode of anthologizing, the bland recommendation that the anthologist simply select the best things that his magazine has printed. Here the trouble is a version of embarrassment of riches. A truly distinguished periodical (and in the last 20 years what magazine has been more distinguished than *Commentary*?) contains issue by issue, year by year, a high percentage of excellent exposition, novel notion, and sophisticated analysis.

Unavoidably the anthologist must seek excellence by category. He must isolate themes and narrow the range of his choices. In the case of *Commentary* concentration on the pre-Podhoretz years would certainly have evoked at least one such